



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 35143376

Date: DEC. 10, 2024

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a visual artist, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not establish his satisfaction of at least three initial evidentiary criteria. Specifically, the Director found the Petitioner met only one (display under 8 C.F.R. § 204.5(h)(3)(vii)) of the six claimed categories of evidence. We dismissed a subsequent appeal, determining that although he demonstrated eligibility for a second criterion (published material under 8 C.F.R. § 204.5(h)(3)(iii)), the Petitioner did not meet any other criteria. The matter is now before us on combined motions to reopen and reconsider.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motions.

## **I. LAW**

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome). A motion to reconsider must establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

## II. ANALYSIS

### A. Motion to Reopen

On motion, the Petitioner does not state new facts and submit documentary evidence. Instead, the Petitioner contests the correctness of our prior decision, which will be addressed below. Accordingly, the Petitioner's motion to reopen does not meet the requirements under 8 C.F.R. § 103.5(a)(2) and will be dismissed.

### B. Motion to Reconsider

The Petitioner contends we erred in determining that he did not fulfill two additional criteria. Specifically, the Petitioner asserts:

The Original Petition did not argue [the Petitioner's] authorship of scholarly articles, however, evidence was provided for this category with the petition as well as the Response to the RFE [request for evidence] clearly meets the plain language of this category based on his published scholarly articles. Additionally, the appeal brief our office sent to the AAO also argues this category, however, the decision by the AAO, for some reason, does not even address it. We respectfully request that you read and review the evidence resubmitted with this submission that clearly demonstrates how [the Petitioner] fulfills this category.

Both of the Petitioner's cover letters submitted in support of the initial petition and in response to the Director's RFE do not claim eligibility for the scholarly articles criterion under 8 C.F.R. § 204.5(h)(3)(vi). Specifically, the Petitioner's initial cover letter asserts his eligibility for the following criteria: awards under 8 C.F.R. § 204.5(h)(3)(i), published material under 8 C.F.R. § 204.5(h)(3)(iii), original contributions under 8 C.F.R. § 204.5(h)(3)(v), display under 8 C.F.R. § 204.5(h)(3)(vii), and leading or critical role under 8 C.F.R. § 204.5(h)(3)(viii). In response to the Director's RFE, the Petitioner's accompanying cover letter discusses the same criteria, including the high salary criterion under 8 C.F.R. § 204.5(h)(3)(ix). In fact, the cover letters provide an analysis specifying which evidence related to the applicable criteria. The letters make no mention, indication, or assertion of the Petitioner's eligibility for the scholarly articles criterion. The burden remains with the Petitioner to establish eligibility for the benefit rather than for the Director to guess or assume which eligibility requirements, if any, the evidence relates. *See* 8 C.F.R. § 103.2(b)(1); *Chawathe*, 25 I&N Dec. at 375-76.

The Petitioner was put on notice and given reasonable opportunities, both at initial filing and in response to the Director's RFE, to claim eligibility for the scholarly articles criterion. Because the Petitioner did not argue eligibility for this criterion before the Director, we did not consider the Petitioner's eligibility claim for this issue for the first time on appeal. Generally, appellate bodies will not decide issues in the first instance or consider claims raised for the first time in an appeal. *Nat'l Rifle Ass'n of Am. v. Vullo*, No. 22-842, 2024 WL 2751216, at \*10 n.5 (U.S. May 30, 2024).

In addition, the Petitioner asserts that under the awards criterion “the denial decision issued by the AAO claims that additional evidence is still required to fulfill this category” and provides an excerpt of our decision:

For example, the decision issued by the AAO claims: “. . .the Petitioner did not provide sufficient documentation on the process of how individuals are selected and awarded the fellowship, and information regarding the individuals who determine who is selected for the fellowship. In addition, the record does not contain official results or other evidence demonstrating the number of entrants in the competition in the year he was awarded the fellowship.

The Petitioner misconstrues our decision by only quoting a partial section, attempting to show that we required specific evidence to meet this criterion. The following is the actual discussion from our decision:

On appeal, the Petitioner reiterates that he was awarded the 2019 [redacted] Fellowship. The Petitioner further explained that the [redacted] art museum in the world with a mission to exhibit and preserve [redacted] art and foster the artists who create it. In a letter by the executive director of the museum, the author explained that the 10 months fellowship is a program “made up of seminars and mentorship services designed to help artists maximize their potential while also engaging in critical discourse.” The Petitioner further states on appeal that this fellowship is an “internationally recognized prize since it has been frequently featured in major art publications such as *Artnet*, which attracts 6.2 million monthly website visitors.” However, the record does not contain any additional information or supporting evidence regarding the competition to support the Petitioner’s claim that his selection for this fellowship should be considered a nationally or internationally award for excellence in the field of visual art. For example, the Petitioner did not provide sufficient documentation on the process of how individuals are selected and awarded the fellowship, and information regarding the individuals who determine who is selected for the fellowship. In addition, the record does not contain official results or other evidence demonstrating the number of entrants in the competition in the year he was awarded the fellowship.

The Petitioner also did not provide sufficient evidence of the level of recognition associated with this award. On appeal, the Petitioner claims that this fellowship is internationally recognized because it has been featured in major art publications. While the fellowship may receive media attention, the record lacks sufficient evidence verifying that this fellowship is a nationally or internationally recognized award for excellence in the field, or evidence that the Petitioner himself received any recognition from outside the issuing organization. Even if the media attention evidences national or international recognition, the Petitioner did not provide sufficient evidence to establish whether the award itself is nationally or internationally recognized and awarded for excellence in the field of visual arts.

Although the Petitioner does not discuss any other awards on appeal, a review of the awards discussed in the initial petition also do not contain sufficient evidence regarding the rules and selection process for granting the awards, official results for the entire competition, the number of competitors and prize winners in each age and category, or other evidence related to the specific category in which he received an award. Further, the Petitioner did not provide sufficient evidence to determine that the Petitioner's awards for the noted competitions are a nationally or internationally recognized prize or award for excellence in the field of visual arts.

As indicated above, we determined the Petitioner did not establish that his 2019 [redacted] Fellowship met this criterion because he did not provide sufficient documentation or offer additional information demonstrating the national or international recognition for excellence in the field. Moreover, we offered examples of evidence and information that may show the fellowship's eligibility but did not require the Petitioner to submit particular evidence, as asserted on motion.

Moreover, the Petitioner argues that he provided a list of names for 11 other artists who received the [redacted] Fellowship in 2019. The record contains screenshots from [redacted] org indicating the names of past fellowship recipients since 2017. Although the Petitioner claims "[t]his vital evidence," the Petitioner did not demonstrate the significance of the documentation or explain how evidence of past recipients' names reflects the fellowship's national or international recognition for excellence in the field. Likewise, while the Petitioner asserts that applications are "by invitation only," the Petitioner did not show how this establishes the fellowship as a nationally or internationally recognized prize or award for excellence in the field.

Furthermore, the Petitioner contends that he provided an article posted on advocate.com, which reported on an exhibition and indicated his receipt of the fellowship, and screenshots from artnet.com announcing an exhibition and indicating that "[t]he Fellows come from disparate backgrounds and engage in equally divergent art practices, and their artwork presents a multitude of positions within contemporary queer identity." However, the Petitioner did not establish how the evidence shows the national or international recognition for excellence in the field for the fellowship. The evidence, for instance, does not discuss or indicate the recognition of the fellowship in the field or otherwise reflect the field's view of the fellowship as a nationally or internationally recognized prize or award. Moreover, the Petitioner did not demonstrate how two articles mentioning the fellowship or fellows reflect the national or international recognition for excellence in the field. While the Petitioner claims that "the [redacted] has been featured in various major media outlets and major art publications," the issue for the criterion is the national or international recognition of the prize or award rather than the reputation or publicity of the awarding entity, institution, or organization.

For the reasons discussed above, the Petitioner did not overcome the grounds for dismissal of the awards criterion. Because the Petitioner did not demonstrate his motion satisfies the requirements for a motion to reconsider under 8 C.F.R. 103.5(a)(3), we will dismiss the motion to reconsider.

### III. CONCLUSION

The Petitioner did not establish new facts in order to reopen the proceeding. Furthermore, the Petitioner did not show how we erred in law or policy.

**ORDER:** The motion to reopen is dismissed.

**FURTHER ORDER:** The motion to reconsider is dismissed.